

SOUTH AFRICA / JUDGMENT

Dreyer N.O and Others v Witbooi and Others (2024/124657) [2024] ZALCC 45 (9 December 2024)

[2024] ZALCC 45

COURT

Land Claims Court

BEFORE

Mabasa

CASE / FILE NUMBER

2024/124657

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IN

THE LAND COURT OF SOUTH AFRICA

HELD

AT RANDBURG

COURT

ONLINE CASE NO: 2024-124657

MAGISTRATE

CASE NO: 2093/2022

(1)

REPORTABLE: NO

(2)

OF INTREST TO OTHER JUDGES: NO

(3)

REVISED.

In

the matter between:

EMMA
SOPHIA DREYER N. O
First Applicant
WILLEM
PETRUS DREYER N.O
Second Applicant
JOHANN
SADIE N.O
Third Applicant
In their capacity as
the trustee in the meantime of
Die Emma Dreyer Trust
(IT 3142/2010)
W
& E DREYER BOERDERY CC
Fourth Respondent
(Registration number:
2011/047387/23)
WILLEM
PETRUS DREYER
Fifth Respondent
and
MARIA
WITBOOI
First Respondent
WILLIE
WILLEMSE
Second Respondent
AND ALL OTHER PERSONS
RESIDING WITH
OR
UNDER THE FIRST TO SECOND RESPONDENTS Third
Respondent
IN THE PREMISES ON
MOOIGELEE FARM, DIVISION PAARL
DRAKENSTEIN
MUNICIPALITY
Fourth Respondent
PROVINCIAL DIRECTOR OF
THE
DEPARTMENT OF
AGRICULTURE,
RURAL
DEVELOPMENT AND LAND REFORM
Fifth Respondent
ORDER
The

following order is made:

1.
The application is dismissed.
2.
There is no order as to costs.

JUDGMENT

MABASA AJ

Introduction

[1] This is an automatic review conducted in terms of section 19(3) of Extension of Security of Tenure Act 62 of 1997 (ESTA).[1] It concerns the eviction of occupiers under section 11 of ESTA.

Parties

[2] The First Applicant is Emma Sophia Dreyer NO., in her capacity as trustee of Die Emma Dreyer Trust (the Trust). The Second Applicant is Willem Petrus NO in his capacity as trustee of the Trust. The Third Applicant is Johann Sadie NO in his capacity as trustee of the Trust. The Trust is the registered owner of the farm commonly known as “Mooigelee” and described on the title deed, T60038/2018, as Portion 8 of the farm Knollefontein, number 170, in the Municipality of Drakenstein, Division Paarl, Province of Western Cape (the farm/premises).

[3] The Fourth Applicant is W & E Dreyer Boerdery CC., a close corporation with limited liability duly registered in terms of the laws of the Republic of South Africa with registration number: 2011/047387/23.

[4] The Fifth Applicant is Willem Petrus in his capacity as the overarching person in charge of the day-to-day farming activities on behalf of the Trust and the Close Corporation. He is also the person in charge of human resources relations on behalf of the Close Corporation and a trustee of the Trust.

[5] The First Respondent is Maria Witbooi, an adult female currently residing at the premises (Ms. Witbooi). The Second Respondent, Willie Willemse is the First Respondent’s co-habitation partner (Mr Willemse). The Third Respondent is all other persons residing with or under the First to Second Respondents in the premises. The Fourth Respondent is the Drakenstein Municipality. The Fifth Respondent is the Department of Agriculture, Rural Development and Land Reform.

Background

[6] The applicants launched eviction proceedings against Ms. Witbooi and Mr. Willemse on 14 July 2022, seeking their removal from the premises.

- [7] It is common cause that Ms. Witbooi's son, Brendon, was previously employed by the applicants as a general worker. As part of his permanent employment, he was granted accommodation on the farm as a benefit of his employment.
- [8] It is also common cause that Brendon's employment was terminated on 24 June 2020, and the housing benefit was concurrently withdrawn following his dismissal.

Applicants' case

- [9] The applicants allege that following Brendon's dismissal, he vacated the farm voluntarily, relocating with his immediate family.

However, Ms. Witbooi and Mr. Willemse subsequently took possession of the premises through self-help, occupying the property in or around August or September 2020.[2]

- [10] The applicants further allege that none of the respondents were employed by them at any point, nor have they previously worked on the farm. Furthermore, the respondents did not obtain consent to reside on the premises, and therefore lack any lawful basis to occupy the employee housing on the farm.
- [11] On 21 September 2020, a notice was served on the respondents, requesting that they vacate the premises. This was followed by a further notice, served on 27 August 2021, inviting representations as contemplated under section 8(1)(e) of ESTA. The respondents failed to respond to either notice. On 4 October 2021, a notice of termination of the right of residence and a demand to vacate the premises were served on the respondents.
- [12] The applicants aver that they desperately need the premises currently occupied by the respondents for allocation to permanent employees.

Respondents' case

- [13] Ms. Witbooi contends that her parents commenced residence and employment on the farm in 1995 as general workers. She joined them in 1996. All her siblings still reside on the farm.
- [14] She alleges that she has resided on the premises for approximately 27 years, and was herself employed as a general worker on the farm beginning in 1996. Her employment ceased around 2017/2018 when the farm changed ownership, prompting her to secure permanent employment on a neighboring farm. [3]
- [15] According to Ms. Witbooi, her partner, Mr. Willemse began residing with her on the premises in 2003. He was also employed as a general worker on the farm until the change of ownership ended his employment.

[16] Ms. Witbooi disputes the applicants' claim that she moved into the premises with her son, Brendon after his dismissal. Instead, she avers that Brendon lived with her on the premises from infancy, and later moved into a separate structure "the hokkie" with his partner and children. However, she persuaded him to return to the main house, citing unsuitable living conditions for the infant in the hokkie.[4]

[17] Ms. Witbooi asserts that she is a lay person and she did not fully comprehend the legal process and notices served upon them.

Disputes of fact

Employment history of respondents

[18] The applicants allege that neither Ms. Witbooi nor Mr. Willemse were ever employed on the farm. This is denied by the respondents who aver that Ms. Witbooi worked on the farm since 1996 and Mr. Willemse was employed as a general worker from 2003.

Consent to occupy the premises

[19] The applicants further allege that Ms. Witbooi and Mr. Willemse took unlawful occupation of the premises, without consent in 2020, and as a result of self-help. Therefore, section 11 of ESTA is applicable to their eviction.[5]

[20] Ms Witbooi, disputing the lack of consent and the applicants' contention that their residence on the premises was a result of self-help maintains that she is a long-term occupier who has lived on the farm since 1996 with her parents and siblings. Accordingly, the provisions of section 10 of ESTA are applicable.[6]

Discussion

[21] In light of the clear disputes of fact, the principles established in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty)*[7] must be applied. The general rule is that an applicant who seeks final relief in motion proceedings must, in the event of conflict, accept the version set up by his opponent unless the latter's allegations are in the opinion of the court, not such as to raise a real, genuine or bona fide dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers.[8]

[22] The respondents claim longstanding residence on the farm, supported by specific allegations that Ms. Witbooi has lived there since 1996 and Mr. Willemse since 2003. These averments are detailed and consistent, and their plausibility is bolstered by Ms. Witbooi's claim that her parents were farm workers before her, and that her siblings still reside on the farm.

[23] Conversely, the applicants' allegation that the respondents unlawfully occupied the premises in 2020 relies primarily on their assertion that neither Ms. Witbooi nor Mr. Willemse were employed on the farm. However, this assertion is disputed by the respondents, who provide specific dates and circumstances of their employment.

- [24] In Wightman[9], the Supreme Court of Appeal emphasised that a respondent must advance a version that is not only credible but also substantiated with detail sufficient to raise a real, genuine, and bona fide dispute of fact.[10] Bald denials or unsubstantiated claims do not suffice to create a real dispute. Unless the applicants can demonstrate that the respondents' account is patently false or untenable, this court must accept the respondents' version as true.
- [25] The respondents' version is supported by factual allegations, including their employment history and the duration of their residence on the farm. Ms. Witbooi provides a coherent account of her residence since 1996, the employment of her parents, and her subsequent employment on Rennies farm. These averments, coupled with Mr. Willemse's claim of residence since 2003, are sufficiently detailed to constitute a genuine dispute.
- [26] The applicants merely assert that the respondents have no legal basis to occupy the premises without offering specific evidence disproving their employment with the previous owner or their long-term residence. Accordingly, the applicants have not provided compelling evidence to show that the respondents' claims are implausible or far-fetched.
- [27] Since no request was made for oral evidence or to refer the matter to trial, the order for the eviction of the respondents should not have been granted by the Magistrate's court.
- [28] In the result, the order of the magistrate is set aside and replaced with the following order:
1. The application is dismissed.
 2. There is no order as to costs.

MABASA D

Acting Judge of the Land Court

[1] 19. Magistrates' courts

- (3) Any order for eviction by a magistrate's court in terms of this Act, in respect of proceedings instituted on or before a date to be determined by the Minister and published in the Gazette, shall be subject to automatic review by the Land Court, which may—
- (a) confirm such order in whole or in part;
 - (b) set aside such order in whole or in part;
 - (c) substitute such order in whole or in part; or
 - (d) remit the case to the magistrate's court with directions to deal with any matter in such manner as the Land Court may think fit

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- [2] Founding affidavit paras 31 - 34.
- [3] Opposing affidavit paras 5-6.
- [4] Opposing affidavit paras 19- 20.
- [5] 11. Order for eviction of person who becomes occupier after 4 February 1997
 - (1) If it was an express, material and fair term of the consent granted to an occupier to reside on the land in question, that the consent would terminate upon a fixed or determinable date, the Court may on termination of such consent by effluxion of time grant an order for eviction of any person who became an occupier of the land in question after 4 February 1997, if it is just and equitable to do so.
 - (2) In circumstances other than those contemplated in subsection (1), the Court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997 if it is of the opinion that it is just and equitable to do so.
 - (3) In deciding whether it is just and equitable to grant an order for eviction in terms of this section, the court shall have regard to—
 - (a) the period that the occupier has resided on the land in question;
 - (b) the fairness of the terms of any agreement between the parties;
 - (c) whether suitable alternative accommodation is available to the occupier;
 - (d) the reason for the proposed eviction; and
 - (e) the balance
- [5] 11. Order for eviction of person who becomes occupier after 4 February 1997
 - (1) If it was an express, material and fair term of the consent granted to an occupier to reside on the land in question, that the consent would terminate upon a fixed or determinable date, the Court may on termination of such consent by effluxion of time grant an order for eviction of any person who became an occupier of the land in question after 4 February 1997, if it is just and equitable to do so.

(2) In circumstances other than those contemplated in subsection (1), the Court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997 if it is of the opinion that it is just and equitable to do so.

(3) In deciding whether it is just and equitable to grant an order for eviction in terms of this section, the court shall have

regard to-

- (a) the period that the occupier has resided on the land in question;
- (b) the fairness of the terms of any agreement between the parties;
- (c) whether suitable alternative accommodation is available to the occupier;
- (d) the reason for the proposed eviction; and
- (e) the balance

[6] 10. Order for eviction of person who was occupier on 4 February 1997

(1) An order for the eviction of a person who was an occupier on 4 February 1997 may be granted if-

- (a) the occupier has breached section 6(3) and the court is satisfied that the breach is material and that the occupier has not remedied such breach;
- (b) the owner or person in charge has complied with the terms of any agreement pertaining to the occupier's right to reside on the land and has fulfilled his or her duties in terms of the law, while the occupier has breached a material and fair term of the agreement, although reasonably able to comply with such term, and has not remedied the breach despite being given one calendar months' notice in writing to do so;
- (c) the occupier has committed such a fundamental breach of the relationship between him or her and the owner or person in charge, that it is not practically possible to remedy it, either at all or in a manner which could reasonably restore the relationship;
- (d) the occupier-
 - (i) is or was an employee whose right of residence arises solely from that employment; and (ii) has voluntarily resigned in circumstances that do not amount to a constructive dismissal in terms of the Labour Relations Act; or
- (e) the owner or person in charge or the occupier have attempted mediation to settle the dispute in terms of section 21 or referred the dispute for arbitration in terms of section 22, and the court is satisfied that the circumstances surrounding the order for eviction is of such a nature that it could not be settled by way of mediation or arbitration.

- (2) Subject to the provisions of subsection (3), if none of the circumstances referred to in subsection (1) applies, the Court may grant an order for eviction if it is satisfied that suitable alternative accommodation is available to the occupier concerned.
- (3) If-
- (a) suitable alternative accommodation is not available to the occupier within a period of nine months after the date of termination of his or her right of residence in terms of section 8;
 - (b) the owner or person in charge provided the dwelling occupied by the occupier; and
 - (c) the efficient carrying on of any operation of the owner or person in charge will be seriously prejudiced unless the dwelling is available for occupation by another person employed or to be employed by the owner or person in charge, the Court may grant an order for eviction of the occupier and of any other occupier who lives in the same dwelling as him or her, and whose permission to reside there was wholly dependent on his or her right of residence if it is just and equitable to do so, having regard to-
 - (i) the efforts which the owner or person in charge and the occupier have respectively made in order to secure suitable alternative accommodation for the occupier; and (ii) the interests of the respective parties, including the comparative hardship to which the owner or person in charge, the occupier and the remaining occupiers shall be exposed if an order for eviction is or is not granted.
- [6] 10. Order for eviction of person who was occupier on 4 February 1997
- (1) An order for the eviction of a person who was an occupier on 4 February 1997 may be granted if-
- (a) the occupier has breached section 6(3) and the court is satisfied that the breach is material and that the occupier has not remedied such breach;
 - (b) the owner or person in charge has complied with the terms of any agreement pertaining to the occupier's right to reside on the land and has fulfilled his or her duties in terms of the law, while the occupier has breached a material and fair term of the agreement, although reasonably able to comply with such term, and has not remedied the breach despite being given one calendar months' notice in writing to do so;
 - (c) the occupier has committed such a fundamental breach of the relationship between him or her and the owner or person in charge, that it is not practically possible to remedy it, either at all or in a manner which could reasonably

restore the relationship;

(d) the occupier-

(i) is or was an employee whose right of residence arises solely from that employment; and

(ii) has voluntarily resigned in circumstances that do not amount to a constructive dismissal in terms of the Labour Relations Act; or

(e) the owner or person in charge or the occupier have attempted mediation to settle the dispute in terms of section 21 or referred the dispute for arbitration in terms of section 22, and the court is satisfied that the circumstances surrounding the order for eviction is of such a nature that it could not be settled by way of mediation or arbitration.

(2) Subject to the provisions of subsection (3), if none of the circumstances referred to in subsection (1) applies, the Court may grant an order for eviction if it is satisfied that suitable alternative accommodation is available to the occupier concerned.

(3) If-

(a) suitable alternative accommodation is not available to the occupier within a period of nine months after the

date of termination of his or her right of residence in terms of section 8;

(b) the owner or person in charge provided the dwelling occupied by the occupier; and

(c) the efficient carrying on of any operation of the owner or person in charge will be seriously prejudiced unless the dwelling is available for occupation by another person employed or to be employed by the owner or person in charge,

the Court may grant an order for eviction of the occupier and of any other occupier who lives in the same dwelling as him or her, and whose permission to reside there was wholly dependent on his or her right of residence if it is just and equitable to do so, having regard to-

(i) the efforts which the owner or person in charge and the occupier have respectively made in order to secure

suitable alternative accommodation for the occupier; and

(ii) the interests of the respective parties, including the comparative hardship to which the owner or person in

charge, the occupier and the remaining occupiers shall be exposed if an order for eviction is or is not granted.

[7] Plascon-Evans Paints Ltd v Van Riebeeck Paints (PTY) Ltd [1984] ZASCA 51; 1984 (3) SA 623 (A).

[8] Ibid at p634E-635C.

[9] Wightman t/a J W Construction v Headfour (Pty) Ltd and Another [2008] 2 All SA 512 (SCA).

[10] Ibid para 13.

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